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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ORACLE USA, INC., a Colorado corporation; ORACLE AMERICA, INC., A Delaware corporation; and ORACLE INTERNATIONAL CORPORATION, a California corporation, Plaintiffs, v. RIMINI STREET, INC., a Nevada corporation; AND SETH RAVIN, an individual, Defendants.	Case No. 2:10-cv-0106-LRH-PAL JOINT CASE MANAGEMENT STATEMENT Date: May 17, 2011 Time: 9:00 a.m. Place: Courtroom 3B Judge: Magistrate Peggy A. Leen

Plaintiffs Oracle USA, Inc., Oracle America, Inc., and Oracle International Corp. (collectively, "Oracle" or "Plaintiffs") and Defendants Rimini Street, Inc. ("Rimini Street") and Seth Ravin ("Ravin") (together, "Rimini" or "Defendants") jointly submit this Case Management Conference Statement in advance of the May 17, 2011 Case Management Conference ("CMC") to provide the Court with a status report of the pending matters.

Part I addresses the current status of the pleadings. Part II provides a status report on party and non-party discovery to date. Part III describes discovery disputes as to which the Parties request resolution by the Court. Part IV sets forth the Parties' joint request for a two-month extension of the case schedule and for a further CMC on June 28, 2011, and summarizes the Parties' extensive meet and confer efforts on the subjects of a framework for streamlined litigation, proposed stipulations, and discovery burden since the last CMC. Oracle views the extension as an interim measure, subject to the Parties' meet and confer efforts and the progress of discovery.

I. STATE OF THE PLEADINGS

Defendants have agreed to the filing of Oracle's Second Amended Complaint ("SAC"), which contains additional copyright claims related to Oracle's Relational Database Management System software. Oracle has not filed the SAC yet because the Parties are negotiating a

stipulation regarding the scope and licensing of Oracle's derivative-work registrations. The stipulation would somewhat reduce the overall list of registered works in the SAC. The Parties hope to finalize the stipulation within the next two weeks.

II. DISCOVERY PROGRESS

Since the last scheduled Case Management Conference of March 29, 2011, the Parties have made the following progress in discovery:

A. Discovery Sought From and Produced By Plaintiffs.

1. Documents

Rimini has served no additional Requests for Production. Between March 29 and the submission of this statement, Oracle has produced an additional 41,000 pages of documents and thousands of voluminous Excel files, including customer contracts and related documentation; customer-specific reports (referred to as oki3 reports); software support materials; Oracle partner documentation; and deposition transcripts and exhibits from the Oracle-SAP litigation. Oracle has also completed document productions from 11 Oracle custodians. Oracle continues to review documents of the agreed production custodians (including server emails, laptop/desktop images, and documents from network share files), as well as additional customer contracts and related documents.

At Rimini's request, Oracle has prioritized the production of seven custodians' documents. At the time of this submission, Oracle has completed the production of five of these priority custodians. Oracle expects to complete production of the other two priority custodians by May 31, 2011. Oracle expects to complete its currently scheduled productions by July 25, 2011.

2. Interrogatories

On April 15, 2011, Oracle responded to Rimini's second set of Interrogatories, numbered 13 and 14 and also supplemented its response to Interrogatory No. 3. The Parties are meeting and conferring regarding the sufficiency of those responses.

3. Depositions

Rimini took one individual deposition on April 21, 2011, and one on May 12. A Rule

30(b)(6) deposition is scheduled for May 26. Rimini has also noticed five additional individual depositions of Oracle employees: one set for May 12, one set for June 17, two to be scheduled for additional dates in June, and one to be scheduled for early August.

B. Documents Sought From and Produced By Defendants.

1. Documents

Oracle has not served any additional Requests for Production on Defendants since March 29, 2011. In the last CMC statement, the Parties described and noted the status of production of the significant Rimini data sources and custodial documents. The following updates that statement as to centralized data sources and custodial documents and then address some related issues not yet ripe for resolution.

2. Centralized data sources

Since the last CMC, Defendants have produced additional centralized data sources then known to and requested by Oracle, including 150 additional Oracle software environments. Oracle's experts are still decompressing this recently received data. However, they estimate that the four terabytes of compressed data for these environments will amount to 12-13 terabytes of uncompressed data.[1] Oracle contends the processing of such productions, and decompression of noncustodial materials such as environments, often necessitates a several-day delay between receipt of materials and the ability even to begin analyzing materials. Oracle further contends that time-consuming analysis of these large volumes of data both depends upon and informs Oracle's depositions of technical personnel.

On April 15, Rimini produced approximately 40,000 files (totaling approximately 23 GB) from its customer archives which Oracle had identified and requested by file name and location. These requested files are largely log files providing certain information about Rimini's

[1] A terabyte is 1 trillion (or 10^{12}) bytes, and "represents the equivalent of 500 [m]illion typewritten pages of plain text." *Manual for Complex Litigation, Fourth* § 11.446 (2004). The printed collection of the Library of Congress could be maintained in 10 terabytes of storage. *See United States v. Faulkner*, Case No. 3:09-CR-249-D, 2010 U.S. Dist. LEXIS 141816 at *3 n.2 (N.D. Tex. Dec. 28, 2010).

downloading of Oracle software and support material from Oracle sources. Because Rimini's customer archives comprise over 22 terabytes of data, Rimini has provided read-only VPN access to the archives and produced some metadata associated with the archives. Rimini has agreed to produce any archive files requested for Oracle clients from Rimini's archives. Oracle continues to analyze metadata from the archives and the files provided from the archives and will request additional material as appropriate.

Oracle's Position: Since the last CMC, Oracle has learned about the existence of certain other data sources that Defendants had not previously identified or produced. For example, during its review of Rimini e-mails, Oracle learned that Rimini Street maintained a Lotus Notes database that tracked the use of certain of Rimini's automated downloading tools.

From Oracle's perspective, despite extensive foundational discovery and months of discussion between the Parties concerning available sources of data tracking Rimini's downloading activity, Defendants had not disclosed the existence of this database, and in fact had never disclosed that any centralized repository tracking Rimini's automated downloading tools existed. Defendants produced a copy of the database on May 5 pursuant to a specific request by Oracle. The database contains details of more than 5,000 separate uses of Rimini's automated downloading tools. Oracle and its experts have spent hundreds of hours attempting to compile from numerous sources the information that was sitting undisclosed on Rimini's server. In addition, the database contains substantial material not identified in prior Rimini Street sources, including records of which customer login credential was for which download and log files that exist nowhere else.

Defendants' position: From Rimini's perspective, it indeed disclosed the logs tracking Rimini's use of downloading tools during the foundational discovery, as Oracle's counsel acknowledged in a letter dated October 5, 2010. As explained to Oracle around that time, the logs tracking Rimini's use of downloading tools are stored along with the client archives. Oracle has had access to the client archives (and thus the download logs) since December of 2010. In fact, as discussed, *supra*, Oracle specifically requested production of approximately 40,000 of these log files in April of this year. While Rimini promptly produced the Notes database at

Oracle's request, this database is simply duplicative of information already in Oracle's possession, as its contents are limited to emails forwarding the download logs along with a cover sheet with summarizing the attached data.

3. Custodial Productions

Oracle's Position: Since the last CMC, Defendants have produced approximately over 100,000 documents (comprising over 700,000 pages) from just from one priority custodian, Dennis Chiu, and additional documents from three other priority custodians and approximately 25 additional custodians. Oracle has now deposed two of these priority custodians. Depositions for the other two priority custodians were rescheduled due to the volume and timing of Defendants' productions (for example, Mr. Chiu's 700,000-plus pages of documents were produced only 16 days before his scheduled deposition). The postponed depositions have been rescheduled for June.

Defendants' Position: Defendants have produced approximately 265,000 documents totaling nearly 3.2 million Bates-numbered pages. This page count is more than double the 1.5 million pages that had been produced as of the last CMC on March 29. In addition, Defendants have produced in excess of 5,600 files in native format. Defendants plan to make multiple additional productions in the next few weeks, which will soon bring Rimini's total production to over 3.5 million pages. The documents produced include client contracts, correspondence and emails between Rimini Street and its clients, documents regarding policies and procedures related to Rimini Street's business activities, documents related to investments in Rimini Street, documents related to maintenance end dates and download authorizations, documents related to on-boarding, documents related to extraction tools, and documents related to customized fixes and tax and regulatory updates.

C. Third Party Discovery

1. Customers

Since March 29, Oracle has served subpoenas on approximately 56 of Rimini's customers (including subpoenas Oracle anticipates will have been served by May 17) for a total of 252 subpoenas. Oracle has received approximately 159 document productions in response to

these and prior-served subpoenas. Oracle's effort to process, review, and produce these productions to Rimini is ongoing.

Oracle's Position: Discovery from customers is important for many reasons. Customers are likely to have multiple categories of documents relevant to the Parties' claims and defenses, including, for instance, internal emails documenting the reasons for the decision to switch to Rimini Street, reflecting concerns about the legality of Rimini Street's services, and reflecting Rimini's representations concerning the same; software updates provided by Rimini Street based on infringing code; download log files; documents evidencing attempts by Rimini to mislead Oracle or avoid detection; or documents discussing Rimini's alleged authority to access and download from Oracle's websites and copy software. Perhaps most important, Defendants will claim that none of these customers left Oracle due to Defendants' infringement, but rather for other reasons. The most direct way to test this contention is to ask the customer. Having recruited these customers with illegal activity, Defendants should not now be able to play the victim and oppose these queries. If it opposes a handful of depositions, then Rimini should be precluded at trial from contending that Oracle has not met its burden of proof, and Rimini should be precluded from contending that the customers would have left Oracle anyway. In all, this evidence may provide evidence of causation, damages, willfulness, infringement, or computer fraud that Oracle cannot obtain from Rimini or anywhere else.

Oracle has been reluctant to start these depositions without resolution on its request for additional depositions because Oracle expects them only to last a one or two hours each and cannot afford to spend a deposition slot on such a short deposition with so much party discovery yet to complete and the case schedule uncertain. To avoid delay, at the Parties' meet-and-confer in Kansas City on April 14, 2011 (described more fully below), Oracle proposed a stop-gap agreement to allow the Parties seven hours of third-party deposition time, not counted against the current total, to be allocated at the discretion of the noticing Party. Defendants responded to this proposal in their May 3 letter, in which they proposed six customer depositions, which would allow 42 additional hours of deposition. At the last CMC, Oracle proposed 50 additional hours. Because Oracle does not anticipate these depositions will take more than a couple of hours each,

Oracle would accept the 42 hours proposed by Defendants, so long as it could allocate them in one- or two-hour increments to depositions of its choosing.

Rimini's Position: To the extent Oracle is afforded any customer depositions, these depositions should be subject to a reasonable numerical limit, not the unrestricted hours-based approach advanced by Oracle. This reasonable numerical limit should not be greater than six depositions. Given the already extensive party and non-party discovery regarding Rimini's customers, six additional depositions (totaling up to 42 hours) will allow Oracle to garner more than a sufficient amount of customer testimony. For instance, Oracle could depose two customers for each of the relevant Oracle product lines. Any further customer depositions would, by definition, be cumulative and duplicative. Oracle does not need and should not be allowed to seek the same information from multiple third party witnesses.

Oracle requests up to 40 depositions of Rimini's customers, allocated in one to two hour increments. Oracle has already systematically subpoenaed over 250 of Rimini's customers with subpoenas requesting the exact same documents. Oracle appears to be on a crusade to burden every single one of Rimini's customers even though they all have essentially the same information. Now, Oracle wants to extend its crusade to what are sure to be duplicative depositions.

And such is precisely the undesirable result that stems from Oracle's hours-based approach to deposition limits. For instance, Oracle's request for an unfettered 42 deposition hours would allow Oracle to take dozens of customer depositions all over the country. Oracle itself suggests it will take 20 such depositions in this time frame. The business interruption and legal expense associated with such proposed depositions simply cannot be justified, and Oracle fails to explain the specific and unique information it would hope to glean from these disparate customer depositions. This Court has already considered a similar proposal in rejecting Oracle's request for a bare limit of 200 deposition hours. And even then, Oracle was granted over twice the number of depositions contemplated by the Federal Rules. Oracle has not demonstrated why it needs potentially dozens of depositions directed solely at Rimini's customers, or why such depositions would not be duplicative of depositions Oracle can take within the current deposition

limit. Oracle should get the discovery it needs from exemplary customers, but the Court should not facilitate Oracle's non-discovery goals by enabling another rampage through Rimini's customer list.

2. Public Entities

As of the last CMC, Oracle had made state "sunshine act" requests of 46 public entities that may have had significant contact with Rimini, 40 of which had responded with substantive productions or statements that they had no responsive documents. Since the last CMC, another entity has responded with a substantive production (bringing the total responses to 41 entities), and two entities that had previously responded have made supplemental productions.

The Parties' review of the sunshine act materials is ongoing.

3. Other Third Parties

Since March 29, Oracle has continued to negotiate with respect to subpoenas served on third-party support providers Spinnaker Support, CedarCrestone, and netCustomer. Oracle has also served subpoenas on Rimini Street consultants Aner Group and Summit Technology, and has received a production of documents from Rimini Street investor Adams Street Partners. Defendants have subpoenaed these same companies, and also have served subpoenas on nine providers of consultant services for Oracle-branded products. Most of these providers are Oracle partners.

III. DISCOVERY IMPASSES

Since the last scheduled Case Management Conference of March 29, 2011, the Parties have reached impasses on certain discovery issues, and request the Court's assistance in resolving these issues.

A. Oracle's Request for Additional Custodians

On March 25, Oracle requested that Defendants add nine additional custodians to the list of agreed-upon custodians for document production. Defendants ultimately declined to add any new custodians on April 21, asserting that no sufficient basis for identifying additional custodians beyond the previously agreed limit of 54 had been stated. The Parties' most recent letters on this topic, dated March 25, March 31, April 12 and April 21, are attached as **Exhibit A**.

Oracle's Position: On November 17, 2010, the Parties agreed that each side would identify 54 party custodians, "without prejudice to revision if either side discovers material new information revealing additional sources of evidence." Oracle's position is that incomplete testimony and inaccurate testimony by Defendants' corporate designees pursuant to Fed. R. Civ. P. 30(b)(6) each serve as an appropriate basis for designation of additional custodians.

First, Defendants' corporate designees frequently referred questions within the scope of the noticed topics to individual developers and other technical personnel, many of whom Oracle had not previously named as custodians. Oracle then sought to add a small number of technical personnel (either directly implicated by the 30(b)(6) designees or revealed to hold analogous positions upon review of Defendants' later productions) as additional custodians. Oracle contends that this addition of a small number of additional custodians is warranted under the Parties' agreement, given this incomplete testimony. Accordingly, Oracle requests that the Court allow Oracle to name additional developers and technical personnel as custodians so that Oracle can seek more complete information about Rimini's conduct.

Second, the testimony of Defendants' corporate designees both before and after the November 17, 2010 agreement has been shown to be inaccurate through the process of taking additional discovery. For example, Rimini Street's 30(b)(6) designee, Brian Slepko, testified that all PeopleSoft fixes for a given customer were developed using only that same customer's PeopleSoft environment and that same customer's other software and support materials. *See* Deposition of Brian Slepko Pursuant to Fed. R. Civ. P. 30(b)(6), August 24, 2010, at 74:16-76:16. In contradiction of that testimony, another corporate designee, Beth Lester, testified that certain PeopleSoft fix objects would be developed once but delivered to multiple customers. *See* Deposition of Beth Lester Pursuant to Fed. R. Civ. P. 30(b)(6), March 17, 2011, at 100:18-101:22. As another example, Ms. Lester testified that there were no non-customer specific (or "generic") development environments distinct from customer environments. *See, e.g., id.* at 52:9-53:2 (asserting that Rimini Street had no development environments that were not client environments). In other words, according to Ms. Lester, Rimini Street did not take a copy of Oracle's software and keep it with no customer affiliation as a resource for supporting multiple

other customers. Six weeks later, Rimini Street's manager for PeopleSoft fix development, Susan Tahtaras, testified at length about the distinct roles that client environments and non-customer specific development environments played during development and unit testing. *See, e.g.*, Deposition of Susan Tahtaras, April 27, 2011, at 164:12-167:7. From memory, Ms. Tahtaras easily listed almost all of the approximately 10 non-customer specific development environments that Rimini Street uses to service more than 100 PeopleSoft customers. *See id.* at 102:1-104:25, 106:19-107:5 & Depo. Ex. 112 (listing the virtual machines used as development environments).

Based on these examples and instances of similar conduct, Oracle needs not only to propound discovery on Defendants to obtain information directly relevant to the claims and defenses, but also to test the truthfulness of Defendants' witnesses. Defendants dispute that their witnesses have contradicted each other, and acknowledge that resolution of such disputes is a task for the finder of fact, but assert that these contradictions have no relevance to the discovery limits. Defendants' assertion in fact proves Oracle's point: Oracle is requesting additional discovery that can be used to assist the finder of fact in judging the credibility of Defendants' witnesses and public statements, based upon evidence that Defendants' corporate designees have made inaccurate statements under oath. For this purpose, as an independent basis, Oracle requests that the Court allow Oracle to identify additional personnel involved in the front lines of Rimini Street's technical support as document custodians.

Defendants' Position:

Following this Court's guidance, the parties have cooperated to appropriately tailor the discovery in this matter to reduce the burden to both parties. Accordingly, the parties previously agreed to limit the number of custodians for each side to 54. This number was reached through compromise, and each party was allowed to choose its 54 custodians. Such an agreement was necessary given the large number of witnesses on both sides with relevant material. For instance, Oracle's initial disclosures list over 200 individuals with relevant information, a number that exceeds Rimini's entire employee headcount. Because the production of custodian documents is one of the most time consuming and expensive aspects of litigation, the parties agreed that

additional custodians could be added only upon the discovery of "material new information revealing additional sources of evidence."

Oracle now seeks to expand Rimini's custodial productions beyond the limits to which it agreed, but Oracle has provided no material, new information revealing additional sources of evidence. Instead, it bases its requests on the premise that certain Rimini employees may have information regarding the projects they worked on. It is, of course, obvious that *any* employee will have information regarding the work they did, but that fact does not justify the expansion of discovery that Oracle seeks. Most importantly, Oracle's original list of 54 custodians includes numerous employees with virtually identical positions and responsibilities as the nine additional employees it now seeks to add. Therefore, Oracle's request for additional custodians is duplicative of its previous requests. Rimini has already produced millions of pages from the agreed-upon custodians, and millions more will be produced before the close of discovery. These custodian productions, along with Rimini's substantial non-custodial productions, provide more than sufficient evidence for Oracle to litigate this case on the merits.

Oracle also claims that inaccurate or inconsistent testimony from three Rimini deponents merits the addition of these nine new custodians. As a preliminary matter, Oracle's assertions are false – based on out-of-context sound-bites selected to create the appearance of inconsistency. For example, Oracle asserts that Ms. Lester's testimony that certain files are delivered to multiple clients somehow contradicts Mr. Slepko's testimony that fixes created in a particular client environment are created for that client. But the testimony demonstrates that Rimini typically does not even use client environments to create files at all. Likewise, Oracle misrepresents Ms. Tahtaras' testimony to falsely claim that Rimini maintains "generic," non-client-specific development environments, which Oracle then argues contradicts Ms. Lester's testimony. But the testimony of both Ms. Lester and Ms. Tahtaras is quite clear that Rimini does not maintain generic environments, and that each development environment is tied to a particular client and used to support that client.

Moreover, even if Oracle's assertions of inconsistent testimony were true – which they are not – this would not be "material new information revealing additional sources of evidence."

None of this supposedly inconsistent testimony is in regards to "new" information – let alone new information "revealing additional sources of evidence." If Oracle believes it has discovered inconsistent testimony, it may bring it before the factfinder. It may also use its numerous remaining depositions and discovery requests to seek additional information regarding this subject matter. It should not, however, be allowed to use out-of-context sound-bites as a justification to expand the reasonable discovery limits agreed to by the parties at the insistence of this Court.

Every custodial production is a significant burden, requiring considerable time and resources to complete. This is the very reason the parties reached their agreement in the first place. In choosing its initial 54 custodians, Oracle selected numerous custodians in similar or identical positions to the employees it now wishes to add. As Rimini has repeatedly stated, if Oracle does indeed discover "material new information revealing additional sources of evidence," Rimini will produce documents from additional custodians as necessary pursuant to the November 2010 negotiations. Otherwise, Rimini should not be required to undergo the considerable burden of furnishing additional custodial productions any time Oracle discovers a supposed "inaccuracy" or simply wants to add more custodians. Oracle has taken only 6 depositions, and now requests 9 additional custodians premised on the proffered testimony. There can be no doubt that Oracle will use its additional 14 deposition to lodge additional and unreasonable demand for custodial documents. Such scorched-earth tactics have no legitimate place, and the reasonable discovery limits negotiation by the parties should be maintained.

B. Oracle's Request for Additional Depositions

Oracle requests six additional non-customer depositions and (as discussed above) 42 additional hours of customer depositions, to be allocated in one- or two-hour increments. As discussed above, Defendants have offered six additional customer depositions comprising up to 42 additional record hours in total.

Oracle's Position: Including the two depositions that would have been completed before this CMC, but which were rescheduled to June due to late productions, Oracle will have taken eight of its allotted 20 depositions by June 3. Four of these are foundational Rule 30(b)(6)

depositions (computer systems and preservation, Rimini's onboarding process, PeopleSoft support services, and JD Edwards support services). The remaining four are depositions of individual Rimini employees. As explained at the last CMC, even with an agreement to streamline litigation regarding certain aspects of liability, it will require some additional discovery to understand Rimini's business processes (involving three different Oracle product lines), to collect a fraction of the available third party discovery (nearly all of which relates to damages), and to address all other aspects of damages discovery. Therefore, Oracle renews its request, on an interim basis, for a modest expansion of the non-customer depositions, with a reservation of rights to request more depending on the outcome of the Parties' negotiations. The chart below is adapted from the last CMC statement, where each of the categories of deponents on the left is explained in more detail. In this interim proposal, Oracle has reduced by more than half its requested additional non-customer depositions (from 13 additional non-customer depositions to six), and has adopted Defendants' proposed customer deposition hours total (though not adopting Defendants' proposed cap of six customers), per the discussion above.

Category	Proposed Depositions	Total Number of Individuals
Downloaders	3: 1 PeopleSoft, 1 JD Edwards, 1 Siebel	At least 5
Support and Updates	3: 1 PeopleSoft, 1 JD Edwards, 1 Siebel)	More than 50
PeopleSoft Developers, Testers and Packagers	5 (previous request: 10)	At least 25
PeopleSoft Environment Builders	1 (previous request: 2)	At least 5
JD Edwards and Siebel Developers, Testers, Packagers and/or Environment builders	2 (previous request: 3)	At least 12
Sales	4	At least 12
Other Executives (including Defendant Seth Ravin)	4	At least 12 (senior executives)
Other Third-Party Support Providers	3	3 companies with more than 2000 combined employees
Rimini Street Investors	1	At least 4
Customers	42 hours total (previous request: 50 hours total)	More than 300 past or present business customers for PeopleSoft, JD Edwards, and Siebel services

Category	Proposed Depositions	Total Number of Individuals
Total	26 depositions + 42 hours of customer depositions (previous request: 33 depositions + 50 hours of customer depositions)	Approximately 180 total Rimini Street employees, 3 identified competitors, and more than 300 business customers

Defendants' Position:

Oracle requests "on an interim basis" the Court expand its number of allotted depositions by six party depositions and dozens of depositions of Rimini clients. Oracle has already been granted twice the number of depositions contemplated by the Federal Rules, and Rimini is agreeable to six additional customer depositions. Oracle makes little effort to explain why its already extraordinary deposition limits are inadequate. Oracle's requests, if granted, would serve only to impose unnecessary and duplicative burdens on Rimini and potentially dozens of non-parties.

Oracle has not demonstrated "good cause" for adjusting the deposition limit. Instead, it argues that these additional depositions are necessary "to understand Rimini's business processes (involving three different Oracle product lines), to collect a fraction of the available third party discovery (nearly all of which relates to damages), and to address all other aspects of damages discovery." But the specifics of Oracle's requests belie its supposed justifications. For example, Oracle requests 5 depositions of employees working in Rimini's PeopleSoft development organization alone. It is hard to imagine what unique information Oracle hopes to learn from 5 employees in the same department. Indeed, it has already conducted two depositions on such employees, and even these two depositions have exhibited substantial overlap in their subject matter. Oracle can readily obtain the information it seeks if it is mindful of the boundaries set by this Court.

Similarly, as explained *supra* in Section 2(c)(1), Oracle's suggestion that it requires 42 hours of deposition testimony for an unlimited number of Rimini clients cannot withstand scrutiny. It is hard to imagine what Oracle hopes to gain from deposing dozens of Rimini clients rather than the six offered by Rimini (other than burdening a competitors' customers).

The present limit of 20 depositions set by the Court appropriately requires the parties to avoid duplication in selecting the witnesses they choose to personally depose. These 20 party depositions, along with the six customer depositions proposed by Rimini, will allow Oracle to obtain the discovery it desires. Oracle has taken only six depositions and has 14 remaining. Oracle does not need and should not be allowed to seek the same information from multiple witnesses.

C. Rimini's Statement Regarding Discovery Deficiencies

Rimini's Position:

On April 15, 2011, Oracle served its responses to Rimini's Third Set of Requests for Production ("RFP") and its Responses to Rimini's Second Set of Interrogatories. *See* Ex. B, Plaintiffs' Responses to Defendant Rimini Street Inc.'s Third Set of Request for Production; Ex. C, Excerpt from Plaintiffs' Responses to Rimini's Second Set of Interrogatories (filed under seal). In these responses, Oracle refused to produce documents responsive to Rimini's RFP No. 1. Oracle also refused to respond to Rimini's Interrogatory No. 14.c. These discovery requests are directed to the protective measures used by Oracle to protect the computers it alleges were damaged as a result of Defendants' conduct.

This request seeks discoverable information that is directly relevant to Oracle's computer hacking, copyright infringement and breach of contract claims. Rimini has addressed the deficiencies of Oracle's responses in a letter dated May 3, 2011. *See* Ex. D, May 3, 2011 letter from Robert H. Reckers to Thomas S. Hixson. Additionally, on May 6, 2011, the parties met and conferred regarding these issues. Despite these efforts, Oracle remains steadfast in its refusal to produce the requested information. Because these requests are squarely connected to Oracle's damage claims, Rimini is now forced to bring these issues to the Court for resolution. Rimini requests an order compelling Oracle to immediately produce documents responsive to RFP Nos. 1 and to answer Rimini's Interrogatory No. 14.c.

First, the nature of the protective measures used by Oracle to protect its computers from potentially damaging internet traffic is highly relevant to whether Rimini actually caused any damage to Oracle's computers. Specifically, while Oracle alleges that Rimini accessed its

customer support websites in a manner that damaged Oracle's servers, the evidence it has produced regarding this topic is circumstantial, at best. Oracle has even stated that it is expects this to be the subject of expert testimony. It is prejudicial to Rimini Street for Oracle to withhold information about its computer systems that would shed light on the plausibility of Oracle's claims -- particularly when its claims apparently rely on ambiguous information and will be the subject of expert opinions.

While Rimini denies having created any harmful internet traffic, there can be no question that harmful traffic is pervasive on the Internet, and website providers typically employ any number of protective measures to guard against damage from such traffic. As listed by Rimini's discovery requests, these protective measures typically include "firewalls, rate controllers, reverse proxies, router configurations, bandwidth limits. . ." etc. These measures are designed to prevent the very damage from harmful internet traffic that Rimini is alleged to have caused.

Oracle admits it utilizes such measures, stating that it has "numerous mechanisms that regulate access and traffic on it, which protect the hundreds of servers behind the portal, including the handful at issue here." Oracle also admits that these websites are "designed to support thousands of customers." This begs Rimini's very question: If Oracle indeed has these measures in place, and can serve tens of thousands of customers, how plausible is it that that Rimini's activities damaged Oracle's servers in the manner claimed? Oracle's experts will undoubtedly attempt to answer this question by assessing the capabilities of Oracle's systems to handle certain volumes of traffic. Yet this analysis must also consider whether Oracle was employing traffic-limiting devices preventing high levels of traffic from ever reaching the servers-at-issue. In short, the existence of the protective measures speaks directly to whether Rimini's access to Oracle's computers (authorized or not) could have caused the damages Oracle alleges, and, thus, Oracle's relevancy objections are without merit.

Second, Rimini's requests are not overly broad and unduly burdensome. Rimini has already restricted its requests to the specific computers Oracle alleges were damaged as a result of Rimini's conduct. Indeed, Oracle identified only nine servers that were allegedly impacted by Rimini's downloading activities. Also, Rimini's requests themselves are already narrowly

tailored in seeking primarily identification of the measures employed and providing a list of exemplary measures. It is difficult to image how such requests could be further narrowed. Nevertheless, Oracle advances an impossibly broad and unreasonable reading of the requests to excuse its refusal to provide any responsive information. For instance, Oracle argues that answering Rimini's request would require disclose of "detailed map" of that, if leaked, would comprise Oracle entire computer system to "hackers or other criminal." Any reasonable reading of Rimini's requests reveals that it is not seeking the type of information that would allow criminals to break into Oracle's computer system, though Rimini remains willing to work with Oracle to address any specific security concerns. However, given the limited number of machines and narrow scope of Rimini's requests, Oracle's suggestion that Rimini's responses are overly broad and unduly burdensome is without merit.

Finally, Oracle suggests that it has disclosed database deadlock logs and documents related to the banning of IP addresses, and that this is sufficient. But such evidence is, at best, incomplete. While this evidence comprises a subset of responsive material, there can be no question that Rimini is entitled to identification of each of the protective measures employed by Oracle to protect its computers from damaging Internet traffic. Only through the identification of Oracle's protective measures can Rimini assess the plausibility of Oracle's damage claims. Therefore, Rimini requests that the Court compel Oracle to immediately produce documents in response to Request No. 2 and answer Interrogatory No. 14.

Oracle's Position:

Oracle does not "refuse" to produce documents responsive to Rimini's RFP Nos. 1. To the contrary, Oracle has produced enormous quantities of documents responsive to this request. For the reasons explained below, it has refused to produce more because Rimini now pushes the request past any reasonable boundary of relevance or scope. As to Interrogatory 14, Oracle responded in depth as to all other aspects of the interrogatory but could not reasonably, and should not have to under these circumstances, summarize its entire global network security system in an interrogatory.

Rimini's Third Set of RFPs, Request No. 2, seeks "[d]ocuments sufficient to show the

protective measures, if any, used by Oracle to protect any of the computers you allege were damaged as a result of Defendants' conduct, *including but not limited to* any web access management or security platforms (including Siteminder), firewalls, rate controllers, reverse proxies, router configurations, bandwidth limits, IP address banning, intrusion detection system (IDS), and/or database deadlocks." The first four words of the RFP – "[d]ocuments sufficient to show" – are presumably intended to sound reasonable. But they are followed by "including but not limited to," and then a list of numerous aspects of network operation and configuration, apparently every one that Rimini could think of.

Likewise, Rimini's Interrogatory No. 14.c. asks Oracle to "identify any measures in place at the time of damage meant to protect the device from potentially damaging internet traffic (i.e., firewalls, rate controllers, reverse proxies, database deadlocks, software configurations, router configurations, bandwidth limits, IP address banning, IDS, etc.)." The interrogatory does not have any qualifying language in it.

Beyond the voluminous materials and information Oracle already has provided (*e.g.*, ORCLRS0000575, ORCLRS0000576, ORCLRS0000577, ORCLRS0069106, ORCLRS0069107, ORCLRS0083105), these requests seek vast amounts of irrelevant information, are overbroad, and unnecessarily implicate extremely sensitive confidential information about Oracle's network and security systems.

By way of background, the materials that Defendants searched and downloaded reside in databases maintained on Oracle's servers. Rimini accessed the materials in these databases by submitting requests through Oracle's public-facing customer support internet portal, or website. Rimini's requests concerning Oracle's "protective measures" ignore the fact that Oracle implements protective measures for its websites to control traffic through them. Oracle's customer support portal, and the approximately 100 servers and other equipment that run it, constitute Oracle's primary method of support delivery for its tens of thousands of customers all over the world.

Thus, in response to Interrogatory No. 14, Oracle identified mid-tier servers (SES and KM-MT servers) and its SURe database server (then RMSUN08), relating to knowledge

documents, as the ones whose functionality Rimini's conduct impaired. These servers are not directly connected to the internet. Rather, access to them goes through Oracle's public-facing websites, including myoraclesupport.com, which is the gateway for customers to nearly all of the Oracle systems used for customer support. The "protective measures, if any, used by Oracle to protect" its mid-tier and database servers include every protective measure used for Oracle's entire worldwide customer support portal, a system that spans machines around the world – because that portal is what Rimini went through to affect these servers. This complex, interrelated website portal system runs dozens of applications designed to regulate internet traffic through it and maximize responses to customer inquiries that come through it, including by directing traffic to a massive system of applications and machines, designed to support Oracle's customers. Rather than describe the universe of protective measures applicable to that entire system, an essentially impossible task in the context of an interrogatory response, and a pointless one at that, Oracle described the impairment it had identified to date in response to subpart (b) of the Request, and described actions taken to mitigate the impairment in response to subpart (d). Oracle has also agreed to produce a Rule 30(b)(6) witness to testify regarding the impairment, and has stated repeatedly that it will provide an expert witness to address these topics.

Thus, Rimini's RFP and interrogatory ostensibly seeking information on "protective measures" are improper for several reasons. First, they seek information that is not reasonably calculated to lead to the discovery of admissible evidence. If Rimini accessed Oracle's websites without authorization or in excess of authorization and damaged a server, it violated the Computer Fraud and Abuse Act. It does not matter what protective measures Oracle had in place, then or now. CFAA liability and damages do not turn on how easy or hard it was to commit the unlawful access. By analogy, it is likewise no defense to bank robbery to say that the bank should have had better security cameras or more security guards. And it is just as illogical to say, as Rimini appears to be saying, that if the bank had many security guards, that proves the defendant did not rob it.

Rather, what is relevant to the CFAA claim is whether Rimini accessed Oracle's systems improperly and, in doing so, damaged Oracle's servers. Oracle has produced the relevant

documents and described the information relevant to that claim, including electronic records and log files, that show Defendants' traffic through the websites to the servers. These documents include internet log files reflecting the occurrence of database deadlocks for the time period six months before Rimini's mass downloading to three months after it, and of course during it. These also include non-privileged documents reflecting Oracle's investigation into and assessment of Rimini's activity. The documents also include an email by a Rimini executive, Dennis Chiu, after committing one of the episodes of downloading in which he stated "I understand our current methodology creates issues with CPU utilization on Oracle's servers."

Oracle is not aware of other records that show this traffic, nor does the existence of any "protective measures" have anything to do with this traffic.

Second, Rimini's discovery requests are also improper because, even assuming that some portion of them seeks relevant information, they still are overbroad. Why does Rimini want or need the router configurations, bandwidth limits, rate controllers, and reverse proxies for the many machines that play some role in Oracle's customer support portal? It does not say, even though any one of these materials would impose significant burden for Oracle to collect across the approximately 100 machines and multiple systems implicated by the request. Oracle designed the portal to serve Oracle's tens of thousands of customers, and it has numerous mechanisms that regulate access and traffic on it, which protect the hundreds of servers behind the portal, including the handful at issue here. For example, security measures that monitor bandwidth activity by users in China or Russia protect the SURe database and KM-MT and SES servers, as they protect everything behind Oracle's support portal, because knowledge documents are one type of thing that someone conducting excessive downloads in China or Russia might try to obtain. Bandwidth monitoring for users in China or Russia – or anywhere – would be responsive to Rimini's RFP. Indeed, looking at the totality of protective measures that Oracle uses in running its global support portal, through which Rimini accessed the servers at issue, it is difficult to see what would *not* fall within the broad scope of the RFP.

Rimini asserts that if Oracle has protective measures in place for its global support portal, then the ability of the portal to withstand high levels of traffic becomes an issue in the case

because it goes to the question of whether Rimini's conduct could have caused the alleged damage. However, that is not accurate, and the argument underscores why Rimini's discovery is overbroad. Rimini's discovery should be proportional to the scope of Oracle's claims. Presumably, the reason Rimini propounded an interrogatory asking Oracle to identify the servers that were impaired was to prevent Oracle from surprising Rimini at trial with contentions that numerous other machines were impaired. Oracle has complied with the request that it identify the affected machines. Rimini is therefore not entitled to sweeping discovery into the protective measures used for the entirety of Oracle's support portal. However, Rimini is seeking the same broad scope of discovery into system-wide protective measures that it would presumably have sought if Oracle had claimed that Rimini crashed the entirety of Oracle's global support portal and every server accessible through it. In Rimini's view, there is no relationship between the scope of permissible discovery and the breadth of Oracle's claims, as their assertion is that impairment to any server behind the global support portal means that all the protective measures in the global portal are now swept into relevance. The Court should not accept such an unbounded view of discovery.

Accordingly, Rimini's broadly written discovery requests call for the production of enormous amounts of irrelevant information, eclipsing its limited or nonexistent relevance. What exists specific to the machines Oracle has identified, Oracle has produced. The Court should reject Rimini's request that Oracle produce these documents and information.

Third, Rimini's RFP and interrogatory raise serious confidentiality concerns. As the Court knows, Oracle alleges that Rimini has stolen significant amounts of Oracle's intellectual property. Rimini is now asking for a detailed map that describes every single security measure Oracle has for its support portal. Any bare relevance of these requests (which Oracle does not concede) is outweighed by the possibly competitive harm in disclosing this information. In theory the protective order prohibits Rimini from using confidential information for a purpose unrelated to the defense of this lawsuit, just as the CFAA prohibits the automated downloading giving rise to the current discovery dispute. However, *any* even inadvertent leak of this information by *anyone* (Rimini employees, attorneys, experts, vendors, etc.) would threaten the

security of Oracle's entire system, exposing it to hackers or other criminals. Given the low to nonexistent relevance, the Court should not impose that risk. *See Brown Bag Software v. Symantec*, 960 F.2d 1465, 1470-71 (9th Cir. 1992) (Court must balance risk of competitive harm from disclosure against need for information to prosecute case).

Accordingly, the Court should deny Rimini's motion to compel further responses to these requests.

IV. SUMMARY OF MEET AND CONFER EFFORTS REGARDING CASE SCHEDULE, DISCOVERY LIMITS AND BIFURCATION

Following the Court's guidance, on the evening of March 29, 2011, the same day that the last Case Management Conference was held, Oracle sent Defendants a letter proposing that the Parties hold a series of in-person meet and confer discussions focused on entering into one or more factual or methodological stipulations. Counsel for the Parties conferred in person on April 14 at the Kansas City office of Defendants' counsel, and on April 26 at the San Francisco office of Oracle's counsel. The Parties also conferred by telephone on May 5. The Parties exchanged substantive letters and e-mails, collectively attached as **Exhibit E**, on March 29, April 8, April 18, April 22, May 3, May 4 and May 6.

As discussed further below, the Parties intend to enter certain stipulations as to undisputed facts and are negotiating others, including a potential agreement to litigate certain issues only as to a subset of alleged infringement and alleged licenses. The Parties' joint request for a two-month extension to the case schedule (except as to the deadline to amend the pleadings, as to which the Parties do not agree) and conditional request for an additional CMC in 45 days is set forth in Part A.

Despite the meet and confer, the Parties have not yet resolved some fundamental differences about (1) whether the licenses that Defendants may assert must relate to the alleged infringement to be tested and (2) how to extrapolate liability and damages from the analysis of any chosen subset of allegedly improper acts to Rimini's support of its entire customer base. Absent resolution of these differences, the Parties may be unable to agree on a process by which to narrow the remaining legal and factual issues in dispute.

The Parties' discussions of narrowing the issues in this case are summarized in Part B below. Part C describes a proposed stipulation regarding the scope of Oracle's copyright registrations for derivative works that the Parties have also addressed in the meet-and-confer process.

In light of the Parties' joint request for an extension, the issues described in section B are not ripe for judicial resolution at this time.

A. Joint Request for Two-Month Extension of the Case Schedule and for a Further CMC

Recognizing the importance of the meet and confer process, and the need to defer certain discovery until the conclusion of the meet and confer process, the Parties jointly propose that the case calendar be continued by two months, which Oracle regards as an interim measure. (Rimini proposes that the date for amending the pleadings remain the same, while Oracle proposes that it move by the same two months as the other dates). Custodial productions will not be completed until July, and it will be essential to have an opportunity to review these productions prior to completing all party depositions. Furthermore, as discussed above, the volume of produced data continues to grow, requiring additional time for analysis prior to the close of fact discovery.

Should the Court grant the Parties' joint request for an extension, the Parties conditionally request to return for a further Case Management Conference in six weeks, on June 28, 2011. The Parties believe that their diligent efforts to meet and confer regarding a roadmap for fair and effective resolution of many of the remaining, disputed issues should be completed by that time, and that an opportunity to present the results of the meet and confer and to discuss any remaining disputes would benefit both the Court and the parties. At that time the Parties would also address whether the stipulated two month extension is sufficient or whether an additional extension is stipulated, or is requested by Oracle and opposed by Defendants.

The chart below shows the proposed effect of the joint request upon the current schedule:[2]

[2] Oracle requests that the deadline to amend the pleading and add new parties be extended two months as well. Oracle believes the extension is necessary to allow sufficient time to complete

(Footnote Continued on Next Page.)

	Current Schedule	Proposal
Last date to complete fact discovery	August 1, 2011	October 3, 2011
Last date to file motions to compel related to fact discovery	August 15, 2011	October 17, 2011
Last date to disclose experts on issues for which a party has the burden of proof, pursuant to Fed. R. Civ. P. 26(a)(2)	September 1, 2011	November 1, 2011
Last date to disclose rebuttal experts	October 15, 2011	December 15, 2012
Last date to complete expert discovery	December 1, 2011	February 1, 2012
Last date to file dispositive motions	January 15, 2012	March 15, 2012
Last date to file joint pretrial order	February 15, 2012	April 16, 2012

Oracle reserves its rights to request a further extension of the case calendar and to request additional discovery pending the outcome of the meet and confer process. Absent resolution of the Parties' current differences, discussed below in Parts B and C, the agreements the Parties otherwise reach may not, at least in Oracle's view, alter the reasons expressed by Oracle at the last CMC and in this statement why more time is needed.

B. Meet and Confer Discussions Regarding Oracle's Copyright Claims and Rimini's Defenses to Copyright Infringement

With respect to Oracle's copyright claims, the Parties have organized their discussions around Rimini Street's alleged improper activity into four categories: Rimini Street's fix-generation process, environments, downloading, and copies of Oracle's database software. As further described below, for the first three of these categories, the Parties have developed a possible framework for analysis of a subset of allegedly improper actions or conduct. However, the Parties disagree about how Rimini Street's license defense should be tested against any such subset. For the fourth category, discussed separately, the Parties are not likely to litigate as to a

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the stipulation that may affect what registrations it pleads, and also because Rimini's recent global expansion possibly implicates other Oracle entities as plaintiffs, an issue that Oracle actively is assessing. Rimini does not join this request as the purpose of the extension is to afford the Parties time to discuss focusing and streamlining the litigation, not to facilitate expansion of the claims and parties.

subset of allegedly improper actions or conduct.

1. Categories of Rimini Street's allegedly improper conduct

PeopleSoft fixes: Rimini Street develops fixes for Oracle software. As explained in the last CMC statement, the term "fix" (or, equivalently, "update") here refers to a collection of one or more code "objects" that in combination modify or implement some functionality in the overall product. These fixes are a key part of Oracle's liability case, because they are what Rimini Street sells to its customers as its competing "service."

Each fix object is, itself, an independently created software program. Many fix objects are over 100 printed pages. Rimini Street has delivered close to 2,000 PeopleSoft fixes to its customers (a number that continues to increase over time), corresponding to an estimated 20,000 fix objects.[3]

Defendants have agreed to provide a list of all PeopleSoft fixes that Rimini Street has generated but have not yet done so. The Parties expect that they will be able to agree to a list of customers that received each fix.

Environments: An environment is the result of an installation of a version of PeopleSoft, JD Edwards or Siebel software.[4] Each environment comprises thousands of code "objects" and a database that stores additional code, data and metadata. PeopleSoft, JD Edwards and Siebel also each have a "tools" component that supplies further functionality. Every environment thus is a complex system of independently created software programs.

Defendants have disclosed a list of 271 PeopleSoft, nine JD Edwards and 124 Siebel environments present on Rimini Street's computer systems. Oracle contends that, through their deposition testimony, Defendants do not dispute that at least a subset of environments are

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[3] The discussion as to Rimini Street's development processes for JD Edwards and Siebel software has been deferred pending further discovery. The Parties agreed during the course of meet and confer discussions that Oracle will conduct Fed. R. Civ. P. 30(b)(6) depositions as to Rimini Street's support for JD Edwards and Siebel.

[4] Environments are created either by using "install media" such as CDs, DVDs or electronic installation files, or by copying other environments.

regularly used to support multiple customers, for instance, by creating fix objects once and sending copies of those objects to multiple customers. Defendants have agreed to supplement their disclosed list of environments to identify the version of PeopleSoft, JD Edwards or Siebel software corresponding to each local environment and to identify the service packs, maintenance packs, updates and patches that have been applied to each environment (to the extent such information is reasonable available to Rimini). Oracle will also require some discovery as to the source of each environment.

Downloads: Oracle's technical websites contain install media, collections of code objects, documentation and other reference materials. Rimini Street has performed multiple downloads from one or more of Oracle's technical websites for most if not all of Rimini's clients. Rimini Street agrees that it makes at least one internal copy of these downloads before it copies the materials to what it describes as "client archives." Oracle contends that Rimini Street admits it has used automated crawlers and other mass download tools to perform these downloads.

2. Litigation as to a subset of allegedly improper actions or conduct

As described above, Rimini Street has created substantial populations of fixes, environments and downloaded materials. Rimini Street does not dispute that the conduct that gave rise to these populations resulted in the creation of multiple copies of Oracle's copyrighted software. Through extensive meet and confer, the Parties have explored whether it would be possible to litigate only as to the conduct giving rise to subset of these copies (and to focus discovery upon that conduct), and then to extrapolate the results of that targeted litigation to the entire populations.

As to each of these broad categories of activity, Rimini alleges that it is able to assert one or more customer licenses as a defense to liability for copyright infringement. Oracle disputes that Rimini can meet its burden to show that it can properly assert any customer's license as a defense. Furthermore, Oracle's position is that it is also Defendants' burden to identify the licenses and the provisions within those licenses that Defendants intend to assert as a defense to each act of infringement.

Oracle's position is that the Parties should litigate as to specific subsets of fixes, environments and customer archives, and that Defendants should attempt to assert any license defenses as to those subsets. Defendants agree that the Parties should litigate as to specific subset of fixes, environments and customer archives and has proposed that Oracle identify the subset of items it intends to litigate, as well as the alleged misconduct it alleges occurred with respect to that subset.

Because the ultimate goal of this process is to establish a list of copies and customers that give rise to liability and damages (if either is established), the Parties are working to reach agreement in advance regarding how to extend the determinations of liability and eligibility for damages as to the subset of copies and customers to the remaining copies and customers. Rimini has proposed that the previously mentioned subset of fixes, environments and customer archives should serve as test cases (or "trial balloons") for the alleged misconduct to be tested against Rimini's various defenses, including a set of representative license provisions. To the extent liability is established as to the identified test case versus Rimini's defenses, such a liability determination would extend to similar instances of conduct. Though work remains to be done, the Parties have begun discussions regarding the exemplary instances of alleged misconduct and the methodology for identifying similar instances of such conduct in the overall population of evidence.

Oracle intends to hold Defendants to their burden regarding the propriety of the assertion of any license defense. If the Parties agree to litigate only as to a subset of materials for each category (fixes, environments, customer archives), then Oracle's position is that the Parties should agree in advance how to extend the determinations of liability and eligibility for damages as to the subset of copies and customers to the remaining copies and customers. The Parties have agreed that for purposes of these streamlining discussions, the trial should not be bifurcated so that any extension or extrapolation of the sample set would be for all purposes at a single trial.

3. Copies of Oracle's Database Software

Defendants have agreed to stipulate that Rimini Street has reproduced each of Oracle's copyright registrations for Oracle Database software that will be listed in the Second Amended

Complaint, and are likely to agree upon the number of copies that Rimini Street has made. Rimini Street's liability for direct infringement of these registrations will thus be established unless Defendants successfully assert a license or other defense.

4. Customer Licenses

As discussed above, Defendants' position, with which Oracle does not agree, is that the alleged misconduct identified by Oracle with respect to its subset of fixes, environments and customer archives should be tested against a sample set of licenses. Defendants have proposed that the sample set of licenses include 25 PeopleSoft customers, 10 JD Edwards customers and 10 Siebel customers. Defendants have further proposed that the sample be deemed to include license provisions identified in Oracle's Response (including any amended and supplemental responses) to Defendants' Interrogatory No. 11, and Rimini Street's Response (including any amended and supplemental responses) to Oracle's Interrogatory No. 15.

The Parties have agreed that Oracle will identify licenses for a set of customers related to any sample exercise by Bates number. Oracle's agreement to identify customer licenses by Bates numbers in response to requests from Defendants shall not constitute waiver of Oracle's rights to hold Defendants to their burden to show that they can assert any given license and to identify any relevant licenses to any relevant provisions within those licenses.

Oracle's Position: Even if Defendants were permitted to assert a customer's license as a defense to copying of that customer's software (which Oracle does not concede), only the license provisions found in that customer's license could serve to excuse the infringement. Defendants' proposal to decouple the licensing from the infringement finds no support under the law.

Defendants' Position: From Rimini's perspective, the use of representative license provisions is a necessary prerequisite to any extrapolation of liability stemming from a subset of trial cases. Just as such extrapolation would greatly streamline the liability determination, Rimini still must be permitted to fairly assert its defenses, including presentation of at least representative license provisions relevant to the allegedly improper conduct.

C. Derivative Works and Oracle's Second Amended Complaint

The Parties tentatively have agreed to stipulate regarding the scope of Oracle's copyright

registrations for derivative works, so as to reduce the number of copyright registrations that Oracle must allege and to simplify the Parties' analysis of any relevant licenses.

DATED: May 13, 2011

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ATTESTATION OF FILER

The signatories to this document are myself and Robert Reckers and I have obtained Mr. Reckers's concurrence to file this document on his behalf.

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